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S E C R E T SECTION 01 OF 03 BAGHDAD 000537

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SUBJECT: TRIAL OF SADDAM HUSSEIN - SESSIONS 11 AND 12

Classified By: DCM David M. Satterfield for reasons 1.4 (b) and (d).

11. (S) SUMMARY: The eleventh and twelfth sessions of the Ad Dujayl trial continued with witness testimony and minimal difficulties related to the defendants' previous refusal to attend trial. The Court now has received evidence from all but one witness. In a surprise move, however, the Chief Judge recessed the court for two weeks until February 28. The next steps now require that additional testimony be taken and that the Court introduce documentary evidence prior to the judges drafting the final list of charges. Saddam Hussein continues his hunger strike, but the on-site physician reports that his health is not in danger at this point. MNF-I, which has responsibility for Saddam's medical care, has indicated that, if necessary, it will begin involuntary feeding. If needed, the Regime Crimes Liaison Office (RCLo) will seek an order from the Iraqi High Tribunal (IHT) authorizing the forced use of an IV. END SUMMARY.

THE ELEVENTH SESSION

12. (SBU) Just prior to opening the eleventh session of the Iraqi High Tribunal (IHT) on February 13, Judge Raouf Abdul Rahman ordered the detainees to be physically compelled to attend the trial if they refused to return voluntarily. Saddam Hussein was the first to be approached. Unlike most previous sessions, Hussein refused to change into his signature suit and open collared shirt and opted to remain in the native attire he wears each day. When the guards arrived at his cell, he put on his coat, picked up an ornate copy of the Koran, and sat back down in protest. He subsequently was handcuffed and did not physically resist as he was led to the defense's attorney/client meeting room, adjacent to the court chambers.

13. (SBU) After the movement of Saddam to the courtroom, the other defendants complied without resistance. The defendants, with the exception of Barzan Al-Tikriti, also remained in native costume and quietly complied with instructions from Iraqi Police, U.S. Military Police, and U.S. Marshal's Service personnel. Upon his entry into the courtroom, Barzan began to shout at the bench. He subsequently sat on the floor with his back to the bench, removed his shoes and overtly ignored the proceedings, but the trial continued and he eventually took his seat.

14. (SBU) The presentation of evidence began with the reading into record of 23 previously sworn statements. This was followed by testimony of the first two of six government witnesses currently held in custody. Presidential Decree No. 778, which called for the execution in 1982 of 148 primarily Shia townspeople in Ad Dujayl, was entered into evidence. Former Presidential Diwan Director Abdul Tikriti Khudayir, who initially refused to testify, ultimately submitted to

questioning regarding his role in channeling information to Saddam. Khudayir authenticated the signature and handwriting of Saddam Hussein on the Presidential Decree when presented with regime documents by the Chief Prosecutor.

15. (SBU) Despite attempts by Saddam Hussein, Barzan, and others to impede the trial's progress with disrespectful arguments, outbursts, and other distractions, the Presiding Judge maintained order and asserted Saddam's subordinate status as a defendant and supplicant before the Court. The Court recessed for the day at 1445 hrs.

THE TWELFTH SESSION

16. (SBU) During the twelfth session on February 14, the defendants again attempted to delay the trial. Unlike the eleventh session, all defendants except Barzan Al-Tikriti dressed for the day and none of them resisted the guards as they were led to the court chambers. Three additional government witnesses testified about their knowledge of the former regime's response to the assassination attempt on Saddam in Ad Dujayl; however, their testimony was marked by an unwillingness to confirm previous statements made during the investigative phase of the case. (NOTE: Under Iraqi law, witness statements serve as direct evidence rather than impeachment evidence. Therefore, when a witness recants or refuses to confirm a sworn statement, it is up to the panel of judges to determine whether the refusal to confirm the statement's contents casts doubt upon the testimony therein. In the current case, judges will consider the witnesses' fear of Saddam, his supporters, and any other intimidation in making this determination. END NOTE.)

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17. (SBU) Judge Raouf recessed the trial until February 28 without hearing testimony from the sixth and final government witness, contradicting his previous agreement to adjourn for no more than ten days. (NOTE: Although present in the courthouse, the final witness -- former Minister of the Interior Sadoon Shakir -- told prosecutors that he would not testify. END NOTE.) Had the court taken an additional day or two to hear the final witness' testimony and to introduce the documentary evidence, trial could have recessed naturally to draft the formal charges. Now the Court will assemble for one or two days on February 28 and then adjourn for three to four additional weeks so that the judges can draft the formal charging document. By then, the Court will have been in session only four out of 60 days. (COMMENT: This delay may raise the frustrations of the Iraqi people as well as the international perception of ineffectual governance. END COMMENT.)

SADDAM BEGINS HUNGER STRIKE

18. (U) On February 12, Saddam defense attorney Khalil al-Dulaimi, despite not having visited his client since January 29, stated to the media that Saddam would begin a hunger strike on February 13, the day trial resumed. Within 45 minutes of this press statement, however, Dulaimi retracted this claim. Attending physicians noted that Saddam first refused food on the evening of February 12.

19. (S) On February 14, Saddam claimed in court that he and his fellow detainees were on a hunger strike. In fact, only four of the defendants had not eaten that morning: Saddam, Barzan, Taha Ramadan, and Awad Bandar. Although the other three defendants quickly ended their respective hunger strikes, Saddam has continued with his. Saddam has stated to MNF-I that he will not end his hunger strike until he is permitted to see his retained attorney and he is returned to his "regular" cell. (COMMENT: Saddam was visited by his

retained attorney on February 20, though not in response to his demands since the visit had been agreed upon regardless of the hunger strike. Previously, Saddam had been held in the same area of the courthouse as his co-defendants while awaiting transfer to the courtroom. Judge Raouf ordered that Saddam be held separately from his co-defendants while attending court sessions so that he could not communicate and with them. MNF-I complied with the order, which comported with Iraqi law. EN
D COMMENT.)

¶10. (S) According to MNF-I, Saddam remains in good health. As of February 20, the on-site physician reported that Saddam is "doing quite well" despite having lost 15 pounds. MNF-I also conducted a modified mental evaluation and determined that he is competent to assess his own actions. Saddam appears intentionally to be drinking more water than he usually does.

Based on these tests, the on-site physician reported on February 17 that Saddam could go a week or more without food before an IV or forced feeding would be ordered. Should intrusive methods be required, an IV to replace fluids and provide electrolytes would precede any actual forced feeding, which would involve the insertion of a feeding tube through the nose or surgically to the stomach. A nose tube would be good for approximately one week, then a surgical tube would need to be inserted. Saddam is examined twice daily by the physician, who will conduct lab tests every two days. MNF-I re-assesses the situation each evening. To date, on-site physicians have not ordered an IV or forced feeding. Saddam has stated that he does not object to an IV, but the feeding tube has not been discussed with him.

¶11. (S) Pursuant to the Memorandum of Agreement between MNF-I and the Ministry of Justice, the Iraqis have legal custody of Saddam and MNF-I has physical custody. MNF-I is responsible for providing medical care and monitoring Saddam's physical and mental well-being. MNF-I interprets the medical care to include potential forced feeding. MNF-I also has determined that involuntary feeding to prevent the loss of life of a detainee is consistent with DOD policy and U.S. law. Moreover, regardless of necessity RCLO has obtained a broad order from the IHT requesting that MNF-I take all the required steps to preserve the detainees' lives and health.

THE COURT UNDER CHIEF JUDGE RAOUF

¶12. (SBU) COMMENT: Judge Raouf has introduced more order, decorum, and discipline into the proceedings. Having established order, he now is permitting the defendants some more leeway in addressing the court. Although the

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defendants, particularly Saddam Hussein and Barzan Al-Tikriti, have continued to attack Judge Raouf and the methods he uses to control the courtroom, the level of rhetoric has been reduced. One danger in Judge Raouf's approach, however, is that public opinion may conclude that he has a preformed opinion regarding Saddam's guilt. END
COMMENT.
KHALILZAD